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FOREIGN SERVICE DESPATCH

FROM : AMEMBASSY, Tokyo
TO : THE DEPARTMENT OF STATE, WASHINGTON.
REF : Misdes 1, April 30, 1952

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SUBJECT: Transmittal of Memoranda of Conversation on FCN Discussions

There are enclosed copies of the Embassy's version of various memoranda of conversation covering the eleventh and seventeenth informal meetings with Japanese representatives on the proposed FCN Treaty. It is expected that only two or three more meetings will be held during the coming week. Memoranda of conversation on these, together with that on the 18th meeting which is now under preparation, will be transmitted without delay to the Department. The Department's earliest comments and instructions on these memoranda will be appreciated, since it is believed that the Embassy should, if possible, be prepared to enter the final review meetings as soon as the Japanese side is ready, possibly around June 2, 1952.

The principal suggestions and proposals made by the Japanese representatives during these meetings are:

1. Eleventh Meeting, March 28, 1952 (Enclosure 1):

a. The suggestion that the second sentence, paragraph 1, Article XIV be amended to read: "A like rule shall apply with respect to charges of any kind imposed on the international transfer of payments for imports or exports" (Enclosure 1, page 3). The Japanese did not make a formal proposal along these lines, but neither did they withdraw their suggestion;

b. The suggestion that a reservation be entered in the Protocol to this effect: "It is understood that the provisions of paragraph 1, Article XIV, shall not obligate either Party to give prior public notice when such notice is likely to affect adversely the market conditions of specific commodities to be imported" (Enclosure 1, page 5). Although the Embassy's representatives pointed to the various objections to such a clause, it is believed that the Japanese may make a similar specific proposal during the review meetings.

2. Twelfth Meeting, April 1, 1952 (Enclosure 2):

a. The proposal that a reservation be entered in the Protocol along the lines of paragraph 6 of the Protocol to the U.S.-Israel FCN Treaty, with respect to the right to apply quantitative restrictions on imports and exports for exchange control purposes, notwithstanding the provisions of Article XIV (Enclosure 2, page 2);

b. The question as to whether the "screen quota" procedure outlined in

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Article IV of the GATT can be implemented by Japan without violating the provisions of Article XVI (Enclosure 2, page 7).

3. Thirteenth Meeting, April 3, 1922 (Enclosure 3):

- a. The proposal that the final clause of paragraph 3, Article XIX be deleted, and that it be incorporated in a separate and expanded paragraph to be entered as paragraph 7, in this Article (Enclosure 3, page 4);
- b. The proposal that a new and expanded paragraph 5 be substituted for the standard draft's paragraph 5, Article XIX;
- c. The proposal that paragraph 6 be amended substantially along the lines of paragraph 2, Article XIX of the U.S.-Italy FCN Treaty.

4. Fourteenth Meeting, April 8, 1922 (Enclosure 4):

- a. The Japanese understanding that the word "transit", as used in Article XX, is the same as that in Article V, paragraph 1, of the GATT;
- b. The proposal that the second sentence, paragraph 3, Article VII ("Nothing in the present Treaty shall be deemed to grant or imply any right to engage in political activities") or a similar clause (based on other United States FCN Treaties) be inserted in Article XXI between paragraph 3 and 4 (Enclosure 4, page 2).

5. Fifteenth Meeting, April 11, 1922 (Enclosure 5):

- a. The suggestion that a provision be included in the Protocol with reference to Article XXIII which would extend treaty coverage as far as might be practical to the Trust Territory of the Pacific Islands in view of Japan's historical connection with these islands (Enclosure 5, page 3);
- b. The proposal that a paragraph be entered in the Protocol concerning the right to apply the GATT "screen quota" system (amplifying the questions raised at the 12th meeting, see above) (Enclosure 5, page 4);
- c. The proposal, with reference to the difficult question of Japan's status vis-a-vis the GATT, that a further qualifying statement be inserted at the end of the second sentence, paragraph 3, Article XXI, which would then read: "Similarly, the most-favored-nation provisions of the present Treaty shall not apply to special advantages accorded by virtue of the aforesaid Agreement as long as either Party, of its own choice, does not adhere thereto."
- d. The Japanese interpretation that the standard draft's paragraph 3 of the Protocol (concerning "mining on the public domain") covers all mining activity in Japan (which holds title to all sub-soil mineral resources). Hence, according to the Japanese representatives, the rights of aliens to engage in mining is dependent on strict reciprocity. (Enclosure 5, pages 5 and 6). The Department's comments on this Japanese interpretation will be appreciated.

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6. Sixteenth Meeting, April 15, 1952 (Enclosure 6):

The suggestion that consideration be given a clause which would clarify the unique status of the Ryukyu Islands (Enclosure 6, page 2).

7. Seventeenth Meeting, April 17, 1952 (Enclosure 7):

a. The proposal that the first sentence, paragraph 3-bis of the Protocol be amended to delete the phrase "or otherwise restrict or regulate the sale of any goods which are so labeled, marked, or otherwise identified as to create misrepresentation", and that the phrase "or otherwise restrict or regulate the sale of any goods which are left unmarked in an attempt to conceal the name of the country of origin" be inserted in its place. The Japanese stated that their proposed amendment is more strictly in accordance with fair trade practices, and pointed out that Japanese law does not require the marking of goods imported (Enclosure 7, page 3);

b. The proposal that the phrase "or are the product of a national or company of such other Party" be deleted from the second sentence, paragraph 3-bis of the Protocol (Enclosure 7, page 6);

c. The suggestion that paragraph 3-bis be modified to ensure that trade mark and trade name protection beyond the provisions of Article X is not intended, and, further, that the phrase "in accordance with its laws" also be inserted to this end (Enclosure 7, page 6).

For the Ambassadors:

Frank A. Waring
Counselor of Mission
for Economic Affairs

Enclosures:

Memoranda of Conversation:

Eleventh Meeting (March 28, 1952)
Twelfth Meeting (April 1, 1952)
Thirteenth Meeting (April 3, 1952)-ALS6 DOC #107
Fourteenth Meeting (April 8, 1952)
Fifteenth Meeting (April 11, 1952)
Sixteenth Meeting (April 15, 1952)
Seventeenth Meeting (April 17, 1952)

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(Classification)Enclosure No. 1
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Desp No. 13 - TokyoOffice of the United States Political
Adviser for Japan,
Tokyo.MEMORANDUM OF CONVERSATION**Subject:** Informal Discussions on the United States Standard Draft
Treaty of Friendship, Commerce and Navigation**Participants:** For the Ministry of Foreign Affairs:

Mr. Morio Y. AWA, Director of Economic Affairs Bureau
 Mr. Kenichi OTABE, Vice Director, Economic Affairs Bureau
 Mr. Haruki MORI, Chief, First Section, Economic Affairs Bureau
 Mr. Takeshi KANEMATSU, Secretary, First Section, Economic
 Affairs Bureau
 Mr. Kay MIYAGAWA, Secretary, First Section, Economic Affairs
 Bureau
 Mr. Mikizo NAGAI, Chief, Sixth Section, Economic Affairs Bureau

For the Office of the United States Political Adviser, Japan:

Mr. Jules BASSIN, Legal Attache
 Mr. Dudley G. SINGER, Commercial Attache
 Mr. Robert W. ADAMS, Second Secretary

Place: Office of the United States Political Adviser, Tokyo, Japan.**Date:** Friday, March 28, 1952.ELEVENTH INFORMAL MEETINGARTICLE XIV

Mr. Otabe stated that the Ministry of International Trade and Industry is charged with the responsibility of establishing minimum qualitative standards for export goods. These qualitative standards may vary for different countries of destination at some future date, although they are identical at the present time. Mr. Otabe added that it was not impossible that the required standards for export goods might be lowered with respect to certain importing countries which would accept lower-quality Japanese exports. He inquired whether the establishment of such varying standards of quality for export goods, as applied by that Ministry or some other Government agency, would be considered to be in violation of the principle of non-discrimination with respect to import and export restrictions.

Mr. Adams replied that the establishment of minimum qualitative standards was regarded as a matter of internal administration within the Japanese Government. Such standards have already been established for the purpose of enhancing

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the prestige of Japanese goods abroad, thus encouraging Japan's export trade. A system of varying standards of quality for different destinations would have little effect on the trade between Japan and other countries, since this would depend entirely on the demand for Japanese export goods, with quality and price (in competition with the products of other manufacturing countries) being important factors. It would appear therefore that there would be no discrimination against foreign buyers in this matter, and that such qualitative standards for export goods were not subject to the "N Treaty.

Mr. Nagai then stated that the last sentence, beginning with "A like rule...", in paragraph 1 was not clear to the Japanese side. He added that if this clause referred to the international transfer of payments it should properly be placed in Article XII.

Mr. Singer replied that this clause is found in substance in several other FCN Treaties concluded by the United States, particularly in older versions of the article on exchange controls. This sentence has now been added to Article XIV in order to maintain the symmetry of the treaty's provisions with respect to customs treatment, and to bring this Article in closer conformity with the comparable provisions of the GATT and the ITO Charter. He pointed out that exchange controls of the present day frequently overshadow the tariff in restricting or diverting international trade, and that it is important that the principle of non-discrimination in customs matters be clearly applicable to both.

Mr. Yukawa stated that the first part of paragraph 1 referred to customs duties and other charges imposed on goods imported or exported, and that it was difficult to see the exact connection between such duties and charges on the one hand, and the international transfer of payments for such goods on the other. Mr. Otake added that it was his understanding that paragraph 1, Article XII, covered the international transfer of payments, including the requirements established for such transfers, and that the extension of national and most-favored-nation treatment in Article XII appeared fully to cover this problem. The need for the second sentence of paragraph 1, Article XIV, was therefore not clear, stated Mr. Otake, and an explanation of the relationship between this sentence and Article XII would be helpful.

Mr. Adams replied that Article XII referred to international payments as such, with respect to which national and most-favored-nation treatment was accorded. Thus, he said, Article XII clearly established non-discriminatory treatment for a Japanese who would wish to effect a payment or remit or transfer other funds, including financial instruments, from the United States to Japan, or the United States to any third country. Under Article XIV, the United States, having already accorded most-favored-nation treatment to the products of Japan (with respect to their entry into the United States and in all matters relating to duties and other charges, and other regulations and formalities covering imports), would also extend such treatment to the

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payment for such imported goods. It could be seen, therefore, that the individual making the payment under Article XIV need not be a Japanese national, but would in most cases be an American importer. In Japan, the applicant for foreign exchange coverage would not in normal circumstances be an American national (who would also be covered by Article XII), but a Japanese importer. What was being assured the Japanese national by the United States (and American nationals by Japan) under Article XIV was simply that the actual payment for his goods, either before or after their entry into the United States, or upon the filling of the original order and the movement of the goods to the United States, would not be delayed by means of discriminatory formalities. It also gave assurance that discriminatory charges would not be assessed on the actual payment by the importer nor on the financial instruments involved, thus facilitating trade between the two countries.

Mr. Singer added that most, if not all, imports into Japan at the present time were covered by letters of credit issued by a licensed foreign exchange bank simultaneously with the allocation of exchange by the Foreign Exchange Control Board, but that there were undoubtedly cases - and these might increase in the future - where payment was made after the allocation of exchange or the issuance of the import license. In the former case, payment and allocation went hand in hand and would come generally within the provisions of Article XII. In the latter case, however, actual payment was divorced from exchange or import licensing, and would therefore be covered by the second sentence of paragraph 1, Article XIV.

Mr. Yukawa stated that he assumed that this sentence referred only to "charges", since "regulations, requirements and formalities" in connection with payments appeared to fall under Article XII. He suggested therefore that the second sentence, paragraph 1, Article XIV, be amended to read: "A like rule shall apply with respect to charges of any kind imposed on the international transfer of payments for imports and exports".

Mr. Bassin replied that he did not believe this sentence to be so limited, and that regulations, requirements and formalities applied to the actual payment for goods as well as to the goods themselves. For example, and as previously mentioned, cases might arise where the original exchange licensing were conducted in an entirely non-discriminatory fashion, yet when payment was to be made (and when this was entirely divorced from the original exchange allocation procedures) certain formalities might be imposed on the actual transfer of payments for imported goods. It was the intent of Article XIV to ensure that such formalities or requirements, if any, were not discriminatory.

Mr. Yukawa then raised the question of the public notice requirement in paragraph 3 (a), stating that it did not appear appropriate that a bilateral treaty should make such a stipulation. Mr. Yukawa pointed out that the Ministry of International Trade and Industry had already given consideration on several occasions to the abolition of its present public notice system. That Ministry had reason to believe that the somewhat detailed information it now released

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concerning the amount of foreign exchange to be allocated for a given commodity and the country from which import was to be made was detrimental to Japan's best interests. Supplying countries could readily see exactly how much Japan expected to buy and on what source it relied. It was believed that exporting countries, armed with such information, could then gauge the price Japan could afford to pay for a certain commodity. The present public notice system was believed to have led to unwarranted price increases of some essential foodstuffs and raw materials from certain supplying countries.

Mr. Bassin replied that this clause is contained, in effect, in a number of the earlier treaties concluded by the United States, and that it has long been standard in bilateral trade agreements entered into by the United States. Its omission from treaties negotiated from 1949 to 1951 was due to the expectation that the ITO Charter might become universally applicable. This provision is, of course, in the GATT, and it is considered to be a normal, internationally-accepted rule. He added that he could not understand how Japanese importers and exporters or foreign buyers and suppliers could have any idea of the trade they might develop, or the future commitments they might make unless such prior public notice were made.

Mr. Adams added that the Ministry of International Trade and Industry apparently believed that some of its public notices divulged too much information, particularly as to the country of source. The Ministry appeared to be concerned primarily with the price effect of such notices on basic foodstuffs - rice, wheat and barley - and on essential raw materials - iron ore, coking coal, wool, and non-ferrous metals. Mr. Adams pointed out that even if abstract or generalized public notices were issued concerning these commodities - or even if no notice at all were made public, any foreign supplier could estimate Japan's requirements without too much difficulty (on the basis of previous experience, from reports on Japan's industrial production, and other available data).

Mr. Yukawa pointed to the phraseology of paragraph 3 (a), "it shall as a general rule give prior public notice...", and asked whether it could be understood that this did not obligate either party to give such notice in those instances where it would be likely to affect adversely the market conditions of specific commodities to be imported. Mr. Otabe suggested that a reservation to this effect be included in the Protocol.

Mr. Langer replied that it was the purpose of paragraph 3 (a) to clarify that the principle of adequate public notice is to be maintained with respect to the amount of goods which may be imported or exported during prescribed periods whenever quantitative restrictions are enforced. The phraseology employed in this paragraph (e.g. "as a general rule") implied that in exceptional cases - for example, where advance public notice might seriously affect pricing and market conditions of a specific commodity - this notification might be made more general in nature in order not to divulge market information prematurely, or might even be withheld temporarily from the public. Such general notices would be possible in Japan, where import allocations are based on currency availability and not on a strict country-by-country quota basis.

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Mr. Mori stated that although the Ministry of International Trade and Industry was presently required to issue public notification with respect to imports (based on the quarterly foreign exchange budget system), there was no provision for the preparation or release of more generalized public notices which would omit some of the specific information of the present notices.

Mr. Otake added that the requirement of prior public notice in all cases might sometimes seriously embarrass Japan, or weaken its bargaining position with respect to other countries. He stated that Japan might be negotiating with Australia, for example, on a trade plan covering the future exchange of goods, and that the amount of wool desired by Japan was a point at issue. If at the same time Japan were obligated to make public the amount of its exchange allocation for wool during the ensuing six months, it would materially weaken its bargaining power against Australia (since the latter supplies most, if not all, of Japan's wool requirements).

Mr. Yukawa added that there was no particular objection to this clause with respect to imports from the United States, as Japan's trade pattern with the latter does not involve these sensitive commodities, but that its inclusion might seriously affect imports of certain commodities from countries other than the United States. He suggested therefore that a reservation be entered in the Protocol to the Treaty along the lines previously mentioned, to the effect that "It is understood that the provisions of paragraph 1, Article XIV, shall not obligate either Party to give prior public notice when such notice is likely to affect adversely the market conditions of sensitive commodities to be imported".

Mr. Adams replied that such a reservation in the Protocol was far too broad in nature and would nullify paragraph 1, Article XIV. He suggested that the statement made by Mr. Singer (i.e. with reference to the phrase "as a general rule") would appear to give the Ministry of International Trade and Industry the latitude it desired with respect to certain sensitive commodities, while still making effective the general requirement of prior public notice. He pointed out that international traders could not be expected to operate in the dark, but that the issuance of less detailed information in that Ministry's import notifications would probably meet the needs of businessmen. Such general notification might reveal only the total amount of a foreign exchange allocation for a sensitive commodity and not the specific sums set aside for procurement from each individual supplying country. He added that Japan already issues a type of general notice on total exchange availability with respect to the "semi-automatic approval" licensing system, which is much less detailed than the schedule of allocation by commodity from each specified country under the regular quarterly budget system.

Mr. Singer added that further discussions with the Ministry of International Trade and Industry along these lines, during which the phraseology employed in paragraph 1 could be clarified for that Ministry, might be useful. He added

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that the question raised by that Ministry was clearly understood by the American side, and that it was believed that this clause offered the desired latitude without the need for any further reservation which would weaken the general principle of this paragraph.

Mr. Iwakura stated that the Japanese representatives would consult with the Ministry of International Trade and Industry on this point.

It was agreed that the discussions on Article XIV would be continued at the next meeting to be held on Tuesday, April 1, 1952.

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Office of the United States Political
Adviser for Japan,
Tokyo.

MEMORANDUM OF CONVERSATION

Subject: Informal Discussions on the United States Standard Draft
Treaty of Friendship, Commerce and Navigation

Participants: For the Ministry of Foreign Affairs:

Mr. Kenishi OTABE, Vice Director, Economic Affairs Bureau
Mr. Haruki MORI, Chief, First Section, Economic Affairs Bureau
Mr. Takeshi KANEHATSU, Secretary, First Section, Economic
Affairs Bureau
Mr. Koy MIYAGAWA, Secretary, First Section, Economic Affairs
Bureau

For the Office of the United States Political Adviser, Japan:

Mr. Jules BA'VIN, Legal Attache
Mr. Dudley G. SLATER, Commercial Attache
Mr. Robert W. ADAMS, Second Secretary

Place: Office of the United States Political Adviser, Tokyo, Japan.

Date: Tuesday, April 1, 1952:

TWELFTH INFORMAL MEETING

ARTICLE XIV

Mr. Otabe referred to previous discussions on Article XII (particularly at the tenth meeting on March 25) and stated that the Japanese side had drafted a proposed reservation with respect both to Article XIII, as previously indicated, and Article XIV. Mr. Otabe stated that this reservation would permit either party to impose discriminatory restrictions on the exportation and importation of goods which would have an effect equivalent to restrictions on payments and transfers for international transactions. The latter could then be made effective without violating the provisions of Article XIV. Mr. Otabe added that such discriminatory restrictions are recognized by the GATT and permitted to the GATT members in order effectively to implement their controls over international transfers of payments. Such measures, he added, are permissible in order to save or acquire dollars, as well as to use inconvertible un-liquidated currencies until the free convertibility of currencies is restored.

Mr. Otabe therefore proposed that the following reservation be added to the Protocol to the FCH Treaty, and suggested that it be placed immediately after paragraph 3-bis, recently added to the standard draft:

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"It is understood that, until the general convertibility of currency is restored, the provisions of paragraphs 2 and 4 of Article XII shall not be construed to prevent either Party from taking such measures of exchange control as may be necessary from time to time to deal with a stringency of foreign exchange. However, such measures shall depart no more than necessary from the provisions of said paragraphs, and shall be conformable with a policy designed to promote the maximum development of non-discriminatory foreign trade and to expedite the attainment both of a balance of payments position and of reserves of foreign exchange which will obviate the necessity of such measures. A Party may also, notwithstanding Article XIV, paragraphs 2 and 3 (b), apply quantitative restrictions on importation and exportation of goods that have effect equivalent to, or which are necessary to make effective, exchange restrictions applied pursuant to the preceding sentences of the present provision."

Mr. Otake stated that this reservation was substantially in accordance with paragraph 6 of the Protocol to the United States FCM Treaty with Israel. He added that the first sentence was modified slightly in view of the differences between the provisions of Article XII of the Treaty with Israel. He stated that no changes had been made in the second sentence, and that the inclusion in the third sentence of the term "or which are necessary to make effective" was deemed necessary by the Japanese side to cover those export restrictions designed to acquire hard currency. Mr. Otake added that this principle is recognized by the GATT. With reference to the last sentence of the Protocol to the Treaty with Israel, Mr. Otake stated that it was dropped from the Japanese proposal because the consultative clause was already provided for in Article XII of the standard draft, but had not been included in either Article XII or Article XIV of the Treaty with Israel.

Mr. Adams replied that the reservation proposed by the Japanese side would be given careful consideration and that this subject could again be discussed at later meetings.

Mr. Otake then inquired whether the terms of Article XIV, paragraph 4, include those measures considered necessary for: (a) the protection of life and health of persons, animals and vegetation; (b) restrictions on the importation of prison-made goods; (c) the protection of "national treasures"; and (d) for the protection and preservation of natural resources.

Mr. Singer replied that this paragraph stipulates that restrictions based on humane, moral, sanitary or other non-commercial considerations of a customary sort shall not be imposed or administered in such a manner as to discriminate arbitrarily against the commerce of the other Party. Such restrictions therefore should be governed by the general spirit of most-favored-nation treatment.

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Mr. Adams added that points a, b, and c mentioned by Mr. Otake appeared to be included in paragraph 4. The first point (i.e. "protection of life and health") was covered by the word "sanitary" in this paragraph. The other two points, while expressed in a general way, appeared to reflect Japanese laws which restrict the importation of prison-made goods and which forbid the exportation of art and historical objects which have officially been designated "national treasures" of Japan. It seemed clear that these laws, which were considered as falling within the category of "non-commercial nature" in paragraph 4, were not discriminatory since they were applied by Japan with respect to all countries.

In response to a request by Mr. Adams as to the meaning of the fourth point previously mentioned (i.e. measures to protect and preserve natural resources), Mr. Otake stated that this referred to measures of the type authorized under the GATT. Mr. Otake added that under paragraph 1 (g), Article XX of the GATT it was permissible for a country to implement export restrictions related to the conservation of exhaustible natural resources when such measures were made effective in conjunction with restrictions on domestic production or consumption. He stated that there were no such conservation measures contemplated at the present time, and that it was difficult therefore to cite a specific illustration of this type of measure. Mr. Otake added, however, that it might be necessary, for example, to institute strict domestic consumption controls on copper in order to conserve Japan's mineral resources, and that measures to control copper exports would follow as a matter of course. It was this general type of prohibition or restriction that was meant, stated Mr. Otake, and he then inquired whether this was included in paragraph 4, Article XIV.

Mr. Bassin inquired whether the restrictions envisaged by the Japanese side were of a type which might properly come within the provisions of Article XXI, paragraph 3 d (measures to protect essential security interests). Mr. Otake replied that these restrictions might often have a national security character, but that he questioned whether they would always fall clearly in this category.

Mr. Singer then inquired whether the restrictive export measures under discussion would conflict with established international commitments (e.g., participation in LMC with respect to a copper quota from Japan) and whether these measures would be applicable to all countries alike, and would therefore not discriminate against the trade of the United States with Japan.

Mr. Otake replied that these measures would not conflict with international obligations of a specific nature, such as the definite quota systems established by LMC for its participants, and, further, that such measures would not discriminate against one country, since they would apply to all countries.

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Mr. Singer then stated that, although it was somewhat difficult to make a definitive reply to a general question of this nature, it was believed that the type of export restriction mentioned by Mr. Otake (i.e., to conserve exhaustible materials, in conjunction with restrictions on domestic production or consumption, as defined in the GATT) was included among the measures described in paragraph 4, Article XIV.

ARTICLE XV

Mr. Otake stated that there was some question on the Japanese side as to the exact meaning of the phrase "administrative requirements or restrictions" in the second sentence of paragraph 1, Article XV. He added that this sentence states that such requirements or restrictions should not, as a general rule, go into effect until 30 days after publication. He pointed out that the phraseology employed was unlike that found in the first sentence (i.e., "laws, regulations and administrative rulings"), and asked if the latter were included in the "requirements or restrictions" of the second sentence.

Mr. Bassin replied that the phrase "new administrative requirements or restrictions" in the second sentence was not necessarily included in the phrase "laws, regulations and administrative rulings", as used in the first sentence. He explained that, in general, the second sentence contemplated that 30 days public notice would be given in the event of the issuance of a new "administrative" requirement or restriction affecting imports. Mr. Bassin said that a "law" restricting imports would not be considered an "administrative" act, but that a "regulation" or an "administrative ruling" could be so considered, depending on the circumstances surrounding its publication. Mr. Bassin said that when an administrative "regulation" or "ruling" has the effect of imposing a new requirement or restriction affecting imports, 30 days public notice would be required under this provision.

Mr. Nagai stated that in his opinion Article XV followed the lines of Article X of the GATT, and that paragraph 1 was concerned with the same matters covered in paragraphs 1 and 2, Article X of the GATT. Since the latter made a distinction between administrative requirements on the one hand and the actual rates of duty on the other (i.e., the GATT merely states that advances in rates of duty shall not be enforced before their official publication), Mr. Nagai asked whether tariff rates are covered in the second sentence of paragraph 1, Article XV of the standard draft.

Mr. Singer replied that it was believed that basic changes in the customs tariff were not included among the "administrative requirements or restrictions" mentioned in the second sentence, and would therefore not fall within the provision requiring publication 30 days prior to implementation.

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Mr. Nagai stated that the Japanese side would give further study to paragraph 1 in the light of these comments. Mr. Otake then stated that he believed that anti-dumping measures should be enforceable without delay in cases of emergency. He stated that it was quite possible that a country might have to implement anti-dumping restrictions without delay, and that the requirement that such restrictions not become effective until at least 30 days after publication, as implied in the second sentence, would completely nullify their effect. In cases of serious dumping activities, added Mr. Otake, he believed that immediate measures to restrict or prohibit imports of the commodity concerned were absolutely essential, and that these measures should apply equally to products en route at the time of the publication of such measures. Unless protective measures of this type were permissible under paragraph 1, it was suggested that the phrase "other customary grounds of a non-commercial nature" be inserted.

Mr. Adams replied that it was believed that measures of the type described by Mr. Otake, already being permissible under certain provisions of paragraph 4, Article XIV, could properly be implemented on publication in emergency cases. He added that it was not necessary to revise the wording of the second sentence to cover such situations, since the words "as a general practice" (in addition to the terms of paragraph 4, Article XIV) would provide a Government with sufficient freedom of action to take immediate and specific measures against unfair trade practices.

Mr. Mori stated that the second sentence of paragraph 2 was not clear to the Japanese side, and he requested a clarification of this clause. Mr. Singer replied that this phrase meant that infractions of a minor nature (clearly not resulting from an attempt to evade customs regulations or to seek lower tariff rates by supplying false information) which were the result of clerical error in the preparation of customs declarations or other forms should not be penalized except in a nominal fashion.

In answer to a question by Mr. Nagai as to the meaning of the word "nominal" as employed in paragraph 2, Mr. Singer stated that this term meant negligible, small, trivial, inconsequential, or in some cases might even mean fictitious or existing in name only. He added that if a monetary penalty were imposed for violations of customs regulations, only a very small fine - or possibly none at all, such minor infraction merely being made of record - would be imposed in connection with an infraction resulting from clerical error not made in bad faith. With respect to minor infractions of shipping laws and regulations, Mr. Singer confirmed Mr. Nagai's statement that these were the minor breaches of customs regulations or procedural requirements (such as clerical errors made in documentation) mentioned in Article VII of the GATT.

ARTICLE XVI

In view of the statement in paragraph 1 of this Article concerning

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national and most-favored-nation treatment to the products of the other Party. Mr. Otake asked whether it was permissible to impose restrictions on the sale, distribution, and use of critical commodities imported into Japan under ITO quotas, or which might be subject to United States Department of Commerce (Office of International Trade) export controls. He stated that such restrictions were necessary in order to prevent the diversion of such imported commodities, and that it was possible that similar commodities of domestic origin might not be subject to the same restrictions.

Mr. Adams replied that such controls as were mentioned by Mr. Otake were believed generally to fall under paragraph 1 (d), Article XVI (i.e. measures necessary to fulfill the obligations of a Party for the maintenance or restoration of international peace and security). He added that Mr. Otake's statement that imported materials of a critical nature might be subject to control to prevent their diversion in wartime, while domestic products were left uncontrolled, was not clear, since it was generally assumed that end-use or allocation controls would apply to critical materials of both domestic and foreign origin. Although it might be possible that certain specific restrictions (such as a ban on re-export) might be applied in some cases to imported materials and not to similar domestic commodities, it was a generally accepted principle that restrictions on the distribution and use of critical materials were imposed on domestic and imported commodities alike in order to maintain adequate allocation and end-use controls. If, in exceptional cases, domestic materials were left uncontrolled and such restrictions were applied only to imported materials, these would have to be studied in each case in order to determine whether they were consistent with the principles of paragraph 1, Article XVI.

Mr. Nagai then asked whether special measures to control critical materials imported by the Japanese Government under its "Regulations for the Special Account for the Importation of Critical Materials" would be in contravention to the national treatment provisions of the present Article.

Mr. Singer replied that since this question was concerned with imports by the Government itself, it was believed that certain exceptional restrictions might be imposed on their sale or distribution which would not apply either to commercial imports, if any, or to domestic productions. It was believed that such restrictions on critical commodities imported by the Government were permissible under paragraph 1, but specific determination could be made on this point until these were clearly identified and studied in some detail, particularly with respect to their effect on normal international trade.

Mr. Nagai then stated that the Japanese Government intended to de-control rice (as to pricing and distribution), possibly in the near future. Such a step would probably be taken in connection with domestic rice only, imported rice remaining under strict allocation control by the Government. All imported rice, even that brought in by private traders, must now be delivered to the Food Agency of the Ministry of Agriculture. That Agency would retain control over all imported rice (after the de-control of

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domestic rice) in order to help stabilize prices, release supplies where and when needed, maintain an adequate flow of foodstuffs into market channels, and to hold food reserves for emergency purposes. Controls of this type would also be imposed, following the system presently in effect, with respect to such other essential staple foods as barley and wheat. These imported foods, like rice, are also under the control of the Food Agency. Mr. Nagai stated that it was considered essential that such imported staple foods continue to be regulated (with respect to sale and distribution) even after domestic staple foods were de-controlled. He asked whether such measures would be inconsistent with paragraph 1.

Mr. Adams replied that no general statement could be made in advance of the formulation of specific measures of this type, but that it was believed that restrictions on the sale and distribution of Government-owned or controlled stocks of imported staple foods would be permissible if designed for the purposes outlined by Mr. Nagai. While it would appear that such action would not be in accord with the national treatment provision of Article XVI, he believed that such treatment would not be claimed in this case if these extraordinary measures were clearly imposed for the sole purpose of safeguarding Japan's food supply. It was understood, of course, that the most-favored-nation principle would not be violated in this connection.

Mr. Nagai then asked whether the present Japanese system of allocating quotas for the importation of foreign motion pictures was in violation of paragraph 1. He added that the present quota system specified the exact number of motion pictures which might be imported into Japan. Although United States films have been assigned the largest quota, it would appear that the most-favored-nation clause - and certainly the national treatment provision - were not being complied with in this connection.

Mr. Bassin replied that the entry of motion pictures under a quota system appeared to come within the provisions of Article XIV. He made particular reference to paragraph 3 (b) of that Article, which calls for the grant of a proportionate share of the total trade in a commodity which might be subject quantitative restrictions. Since Article XVI established the treatment of such motion pictures after their entry, he was not believed that the provisions of paragraph 1 were applicable to the quota system as such.

Mr. Nagai then stated that paragraph 1 might apply when additional prints were made in Japan of an imported motion picture and the number of exhibitions controlled in implementation of the import quota system. This control over the number of authorized exhibitions was clearly defined in the "screen quota" procedure outlined in Article IV of the GATT.

Mr. Singer replied that such control over the exhibition of motion pictures as outlined in the GATT would appear to be permissible under paragraph 1, Article XVI, in view of the formulation of the standard draft along

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lines consistent with the GATT provisions. He suggested, however, that further study be given the question raised by Mr. Nagai.

ARTICLE XVII

Mr. Otake requested an explanation of the term "exclusive or special privileges" as used in Article XVII. Mr. Bassin said that these were special exemptions (for example, in connection with taxation or customs duties), privileges (such as free postage or transportation, including reduced rates), subsidies, concessions, the granting of exclusive monopoly rights in a certain area or over a certain commodity, and other similar privileges which might be accorded by a Government to one of its agencies or to any quasi-official or non-official organization. He added that, generally speaking, the enterprises or monopolies to which this Article refers have been limited to Governmental agencies in recent years, the previous system of granting exclusive or monopolistic rights to private companies having practically disappeared.

Mr. Nagai then stated that Japan's state trading enterprises, such as the so-called Government "monopolies" (one of which, for example, controls all imported tobacco) or other similar agencies (one of which, for example, is responsible for the purchase, custody and sale of all precious metals) operate in compliance with the provisions of Article XVII, since their purchases and sales involving imports or exports are conducted in accordance with normal commercial considerations. With respect to these state trading enterprises, Japan wished to reserve its position in connection with exceptional measures needed effectively to utilize accumulated or inconvertible currencies. Such a reservation, he added, would be in accordance with the position taken on Articles XII and XIV.

Mr. Mori pointed out that a state trading enterprise might purchase a considerable amount of tobacco, for example, from a Sterling Area Country, despite the fact that the price might be as much as 20 per cent higher than from other sources. Such procurement from the Sterling Area would be encouraged because of the absolute necessity that the Government attempt to reduce the extraordinarily large balance of sterling presently in its hands.

Mr. Bassin replied that this matter was closely related to the points raised in connection with exchange control measures at the seventh meeting (March 13, 1952), when paragraphs 2, 3 and 4 of Article XII were discussed. He referred to the comments made by the American side as to the reasonable and justifiable utilization of accumulated currencies in a manner not unnecessarily detrimental nor arbitrarily discriminatory to the interests of the other Party. Subject to these comments, Mr. Bassin stated that he was of the opinion that state trading enterprises could utilize accumulated or inconvertible currencies in much the same manner as might be appropriate under the quarterly foreign exchange budget system.

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It was agreed that the next meeting would be held on Thursday, April 3, 1952 at which time discussions would begin on Article XVIII.

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Office of the United States Political
Adviser for Japan,
Tokyo.

MEMORANDUM OF CONVERSATION

Subject: Informal Discussions on the United States Standard Draft
Treaty of Friendship, Commerce and Navigation

Participants: For the Ministry of Foreign Affairs:

Mr. Kenichi OTABE, Vice Director, Economic Affairs Bureau
Mr. Haruki MORI, Chief, First Section, Economic Affairs Bureau
Mr. Takeshi KANEHATSU, Secretary, First Section, Economic
Affairs Bureau
Mr. Kay MIYAGAWA, Secretary, First Section, Economic Affairs
Bureau
Mr. Hikizo NAGAI, Chief, Sixth Section, Economic Affairs
Bureau

the Office of the United States Political Adviser, Japan:

Mr. Jules BASSIN, Legal Attache
Mr. Dudley G. SINGER, Commercial Attache
Mr. Robert W. ADAMS, Second Secretary

Place: Office of the United States Political Adviser, Tokyo, Japan.

Date: Thursday, April 3, 1952.

THIRTEENTH INFORMAL MEETING

ARTICLE XVIII

Mr. Otabe stated that in the near future associations might be formed with the approval of the Government for the sole purpose of assisting industries and the Government in their efforts to prevent dumping, the mis-use of industrial property rights, or other unfair business practices. He inquired whether the activities of such associations would be construed as having a harmful effect upon commerce between the two countries with reference to Article XVIII.

Mr. Adams stated that it was his understanding that the activities of such associations would be controlled through Japan's Trade Association Law (which will reportedly be amended in the near future to cover non-profit organizations only) or the Anti-monopoly Law. He added that it was believed that any commercial or industrial association having "police" functions within its field of commerce or industry (as distinct from "control" functions) for the purpose

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of assisting the Government to implement fair trade practice principles would not be prohibited under the terms of Article XVIII.

Mr. Otake then asked whether shipping conference would be prohibited by this Article. Mr. Singer replied that shipping conference activities were permitted by the United States subject to regulations quite similar to those of Japan. A conference operating under such regulations was not considered to have a harmful effect on commerce. Conference activities would be in violation of Article XVIII, however, when they restrained competition, established monopolistic controls, engaged in practices ascribed to the closed conference system, or otherwise had a harmful effect on commerce.

Mr. Otake then stated that Japan believed that its public enterprises engaged in certain trading and manufacturing activities were not in violation of Article XVIII. He stated that these Government enterprises, and the laws regulating their activities were as follows:

a. Law Concerning the Special Account for the Printing Agency, which provides:

"Article 1. A Special Account shall be established and accounted separately from the General Account in order to manage the business of the Printing Bureau on an enterprise basis and to promote the sound business of the Account."

b. Law Concerning the Special Account for Precious Metals, which provides:

"Article 1. A Special Account shall be established and managed separately from the General Account for the purpose of clearing the management concerning the purchase, sale or custody of the precious metals of the Government. In the present Law, 'precious metals' mean gold, silver, platinum, ruthenium, rhodium, palladium, osmium, iridium and iridosmin."

c. Law Concerning the Special Account for State Forestry Service, which provides:

"Article 1. A Special Account shall be established separately from the General Account in order to operate the national forestry work on an enterprise basis and to promote the sound development of the Account."

"National Forestry work in this Law covers the business of control and management of the national forestry in Article 2 of the National Forestry Law, with other miscellaneous minor business attached thereto."

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d. Law Concerning the Special Account for the Important Goods Import Fund, which provides:

"Article 1. There shall be established the Important Goods Import Fund in order to expedite the acquisition and sale of the goods produced abroad and needed urgently by the Government, and a Special Account shall be established in order to manage the accounting concerning its operations as distinct from the General Account."

All of these, stated Mr. Otabe, fall within the category of the public enterprises covered by Article XVIII, paragraph 2. However, because of the very nature of these enterprises, their activities and the special treatment accorded to them were not regarded as coming in conflict with the provisions of Article XVIII.

Mr. Adams stated that Mr. Otabe's description of the operations of these public enterprises or official agencies clearly indicated that they were not in competition with private business. He stated that it was further understood from Mr. Otabe's explanation that, in the event some of their activities might compete with certain private enterprises, conditions of competitive equality would be strictly maintained. The activities of these publicly owned or controlled enterprises were therefore not in violation of the provision of Article XVIII.

Mr. Otabe then asked for a clarification of the term "government instrumentalities" as used in paragraph 3 of this Article. He stated that the Bank of Japan is often designated to conduct certain governmental functions on behalf of the Ministry of Finance or the Foreign Exchange Control Board. He then asked if the Bank of Japan, like the United States Federal Reserve Banks or the Export-Import Bank and others, was to be identified as an official "instrumentality".

Mr. Bassin replied that this term was practically synonymous with "government agencies". He added that the institutions mentioned by Mr. Otabe, including the Bank of Japan, were regarded as "government instrumentalities".

ARTICLE XIX

Mr. Otabe stated that the clause referring to coasting trade, inland navigation and national fisheries in the latter part of paragraph 3, Article XIX, is considered to be a matter related to navigation in general. He suggested that this reservation be provided for in a separate paragraph. He proposed that this reservation be expanded, but that the reference to "national fisheries" be included in paragraph 6, where he believed it would be more appropriate.

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Mr. Nagai inquired if paragraph 3 and 4, when taken together, mean that the vessels of either Party may proceed from one port (including places and waters) to another port (also including places and waters) of the other Party which are or may hereafter be open to foreign commerce and navigation, either for the purpose of landing the whole or part of their cargoes, or passengers, brought from abroad, or of taking on board the whole or part of their cargoes, or passengers, bound for a foreign destination. Mr. Singer replied that Mr. Nagai's interpretation was correct.

Having received this clarification of paragraph 3 and 4, Mr. Otabe proposed that the final clause of paragraph 3 be deleted, and that the following be incorporated in Article XIX as paragraph 7:

"The coasting trade and inland navigation of either Party shall be regulated according to its respective laws and shall be expected from the provisions of the present Treaty. It is, however, understood that the vessels of either Party shall enjoy in this respect most-favored-nation treatment in the territories of the other Party, but that this benefit shall be granted only on a reciprocal basis."

Mr. Adams stated that the deletion of "national fisheries" from the present clause in the standard draft's paragraph 3 was acceptable on a tentative basis, since Mr. Otabe had stated that this point would be raised in connection with paragraph 6. He asked for an explanation, however, of the additional phrase on reciprocity which is not now included in the standard draft.

Mr. Otabe replied that it was assumed that the United States would not grant any rights or privileges in connection with its coasting trade and inland navigation to the nationals of any foreign country. He added that the present United States-Japan FCN Treaty would establish a precedent for Japan's FCN Treaties with other countries, and that it was desired therefore that this provision be so amended in order to allow Japan to negotiate for the extension of certain coasting trade rights on a reciprocal basis. Mr. Otabe stated that although Japan's coasting trade had generally been reserved to its own nationals it might be to Japan's advantage to negotiate with certain Powers, particularly those with colonial possessions in the Far East, for certain limited coasting trade rights. These would possibly (but not necessarily) be limited to the carriage between coastal ports of cargoes imported and cargoes for eventual export under a system which would combine the features of in-transit and coastal shipping. He added that informal discussions along these lines were already taking place. Mr. Otabe stated that the wording proposed for a new paragraph 7 was therefore desired by Japan in place of the present clause in paragraph 3, and that he believed it should not be objectionable to the American side.

Mr. Otabe further inquired in this connection whether inter-island trade within the territories of either Party was considered to be coasting trade. Mr. Singer replied that inter-island trade was so considered.

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Mr. Adams pointed out that the standard draft clause provides for most-favored-nation treatment with respect to coasting trade, and that the word "exclusive" means simply that coasting privileges may be withheld only so long as they are not extended to any third country. In view of the substantially different clause now proposed by the Japanese, Mr. Adams suggested that the deletion from paragraph 3 of the clause under reference and the inclusion of a new paragraph 7 be recorded provisionally in the working draft of the FCN Treaty for the purpose of these informal discussions. He added that these changes would be referred to the Department of State for its consideration.

Mr. Otobe stated that with respect to paragraph 5, concerning vessels in distress, the Japanese side would prefer to employ the phraseology of Article IV of the Japanese draft, because the provisions of the latter were considered to be more specific. He suggested therefore that the following be substituted for paragraph 5 of the standard draft:

"The vessels of either Party, in case of shipwreck, stranding, or of being forced to put into the ports, places or waters of the other Party, whether or not open to foreign commerce and navigation, shall enjoy the same assistance and protection as are in like cases enjoyed by the vessels of such other Party and of any third country, and shall not be subject to any duties or charges other than those which would be payable in like cases by the vessels of such other Party or of any third country. The cargoes of such vessels of either Party and all articles alleged from them shall not be subject to the payment of customs duties unless they are imported into the territories of the other Party."

Mr. Adams stated that this proposal would also be referred to the Department of State for its consideration.

Mr. Otobe then said that it was proposed that paragraph 6 be amended, substantially along the lines of paragraph 2, Article XIX, of the United States FCN Treaty with Italy. He added that it was believed appropriate to include the reservations with respect to national fisheries in this paragraph rather than in the final clause of the standard draft's paragraph 3 or in the newly proposed paragraph 7. Mr. Otobe proposed that paragraph 6 be revised as follows:

"The term 'vessels', as used herein, means all types of vessels, whether privately owned or operated, or publicly owned or operated. However, the provisions of the present Treaty, other than paragraphs 2 and 5 of the present Article, shall not be construed to accord rights to vessels of war or fishing vessels, nor shall they be construed to extend to nationals, companies and vessels of the other Party any special privileges reserved to national fisheries."

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Mr. Nagai added that it was understood that vessels engaged in national fisheries included not only the vessels actually engaged in fishing but also those engaged in marine exploration connected with national fisheries as well as those engaged in the transportation of the catch. Mr. Singer inquired whether Mr. Nagai's question in connection with the transport of the catch referred to mother-ship fishing operations. Receiving an affirmative reply from Mr. Nagai, Mr. Singer stated that such operations and marine exploration activities were included within the definition of national fisheries.

With reference to a question by Mr. Otake on the entry of vessels of war, a point which might arise in Diet interpellations in view of Japan's Constitutional provisions, Mr. Bassin stated that the right of refuge of warships in distress would not be exercisable in a manner inconsistent with the rules of international law.

Mr. Adams stated that the new paragraph 6 proposed by the Japanese would be entered in the working draft of the Treaty for the purposes of these discussions, and would be referred to the Department of State for its consideration.

It was agreed that the next meeting would be held on Monday, April 7, 1952, with discussions to begin on Article XX.

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Office of the United States Political
Adviser for Japan,
Tokyo.

MINUTES OF CONVERSATION

.Subject: Informal Discussions re United States Standard Draft
Treaty of Friendship, Commerce and Navigation

.Participants: For the Ministry of Foreign Affairs:

Mr. Kenichi OTABE, Vice Director, Economic Affairs Bureau
Mr. Haruki MORI, Chief, First Section, Economic Affairs Bureau
Mr. Takeshi KANEZAKU, Secretary, First Section, Economic Affairs
Bureau
Mr. Kay MIYAGAWA, Secretary, First Section, Economic Affairs
Bureau
Mr. Masao OSATO, Chief, First Section, Treaties Bureau
Mr. Mikizo NAGAI, Chief, Second Section, Economic Affairs Bureau
For the Office of the United States Political Adviser, Japan:

Mr. Jules BASSIN, Legal Attache
Mr. Dudley G. SINGER, Commercial Attache
Mr. Robert W. ADAMS, Second Secretary

Place: Office of the United States Political Adviser, Tokyo, Japan.

Date: Tuesday, April 8, 1952.

FOURTEENTH INFORMAL MEETING

ARTICLE XX

Mr. Otabe stated that in order to avoid any possible differences in interpretation it should be clearly understood that the meaning of the word "transit", as used in Article XX, was the same as that used in Article V, paragraph 1 of the GATT, which states:

"Goods (including baggage), and also vessels and other means of transport, shall be deemed to be in transit across the territory of a contracting party when the passage across such territory, with or without trans-shipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey beginning and terminating beyond the frontier of the contracting party across whose territory the traffic passes. Traffic of this nature is covered in this Article 'traffic in transit'."

Mr. Otabe added that it should also be understood that "traffic through the territories of each Party", mentioned in Article XX, includes passengers, baggage, and products carried by aircraft.

Mr. Singer replied that the GATT definition of "transit" was acceptable in interpreting Article XX, and that Mr. Otabe's understanding with reference to

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The inclusion of aircraft traffic was correct.

Mr. Otabe stated that under present regulations, export validations are required in Japan for the temporary unloading and trans-shipment of cargoes when these involve specific commodities subject to export licensing under Japan's security export control procedures. He asked for confirmation of his understanding that the implementation of security export controls would not be regarded as constituting "unnecessary delays and restrictions", as mentioned in Article XI.

Mr. Adams replied that Mr. Otabe was correct in his understanding, and that security measures, including export validations and licenses, were permissible under paragraph 1 (d), Article XXI.

ARTICLE XXI

Mr. Otabe referred to previous discussions on Article VIII (at the fifth meeting, March 7, 1952) when the Japanese side had proposed that the second sentence of paragraph 3 (i.e. "Nothing in the present Treaty shall be deemed to grant or imply any right to engage in political activities.") be deleted from that Article in as much as this clause was of general application. Mr. Otabe stated that this provision might more appropriately fit in Article XII, and he now proposed that it be inserted in the latter Article.

Mr. Adams replied that when this clause was included in the provision on general exceptions in other United States FCN Treaties (for example in the Treaties with Colombia, Israel, Uruguay and others), the phraseology employed was: "The present Treaty does not accord any rights to engage in political activities". Subject to the views of the Department of State, which might prefer to use the terminology just mentioned, Mr. Adams suggested that this Article be amended as proposed by Mr. Otabe (i.e., that the second sentence, paragraph 3, Article VIII be inserted in Article XXI as paragraph 3-bis, for subsequent re-numbering in the final draft).

Mr. Otabe stated that the Japanese side earnestly desired that the second sentence of paragraph 3, Article XXI, reading, "Similarly, the most-favored-nation provisions of the present Treaty shall not apply to special advantages accorded by virtue of the aforesaid Agreement" (i.e., GATT), be deleted from this Article. Mr. Otabe pointed out that since Japan is not a member of the GATT, such concessions as are granted by the United States under a multilateral Agreement not yet open to Japan, would be outside the scope of the Application of most-favored-nation treatment. The purpose of the present treaty prescribing unconditional most-favored-nation treatment would therefore actually be defeated in practice. Furthermore, he said, since the United States is in fact granting the GATT concessions to Japan, the deletion of this sentence would have no effect on the actual relations between the two countries. He again pointed out that the present FCN Treaty will become a model for future treaties to be negotiated between Japan and other countries, and that it was feared that the inclusion of this sentence would establish an unfavorable and most unfortunate precedent, particularly in connection with early negotiations anticipated between Japan and countries already in the GATT.

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Mr. Singer stated that the Department of State had proposed and secured the standard GATT reservation in previous negotiations on the assumption that the country concerned was actually free to come into the GATT, and that any failure on its part to be in the GATT, being of its own choosing, had no effect on the propriety of this reservation. He pointed out that it was not the desire of the United States to use the GATT reservation in order to impose unequal trade relations, and that the Department of State had indicated that some adjustment might be made in the present case in view of the special circumstances involved. There was as yet no definite idea as to what the appropriate solution might be, but it was believed that it should be in the nature of a clarification or qualification of the third paragraph.

Mr. Adams added that paragraph 3 was essential to the FCN Treaty, but that the American side would be most willing to consider any solution the Japanese would desire to submit. He stated that a bilateral treaty could not, of course, commit the United States to any course of action inconsistent with its obligations under the GATT, and that it appeared therefore that any qualification suggested by the Japanese side should be made with reference to the second sentence of paragraph 3, and not to the first sentence.

Mr. Bassin added that the Department of State wished to reassure the Japanese representatives that their point of view was fully appreciated, and that it was prepared to approach this problem in a sympathetic manner, fully confident that a mutually satisfactory solution can be found.

Mr. Otake replied that further consideration would be given this matter, and that the Japanese side would be prepared to discuss a proposed clarification or qualification of this paragraph, possibly at the next meeting.

With respect to paragraph 4, Article XII, Mr. Otake asked for a definition of "limited purposes". He asked whether a treaty trader or an employee of a Japanese company, permitted to enter the United States in connection with the activities of that company, might subsequently enter the employment of another company, for example of a domestic American firm, without violating the provisions of this paragraph. He also inquired whether employment in another Japanese firm, for example a subsidiary or affiliate of the company originally employing this individual, would be permissible.

Mr. Adams replied that a treaty trader or an employee of the type mentioned by Mr. Otake would be permitted entry into the United States as a non-immigrant, subject to specific limitations on his activities. He added that various types of visas of a non-immigrant or temporary character are issued for entry into the United States; these are granted subject to varying conditions, qualifications or restrictions, and are valid for varying periods, ranging from a few months (for tourists) to an indefinite period of stay (for the so-called treaty traders). The latter are issued a visas of indefinite tenure, valid for so long as they continue to promote trade and commerce between the United States and their country. These individuals could change employment while in the United States, provided, of course, the character of their employment remained unchanged and they continued to promote trade and commerce between the United States and their country. This change could be made with the prior knowledge and approval of the appropriate officials of the

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Department of Justice (the Immigration and Naturalization Service of the United States).

In reply to further questions put by Mr. Nagai, Mr. Adams stated that it is only the individual who enters the United States as an immigrant for permanent residence who is not subject to specific limitations or restrictions on his business or professional activities. Mr. Adams added that the Japanese employee previously mentioned by Mr. Otake would not be permitted to resign from a Japanese firm in order freely to seek employment in the United States. It was possible, however, for this employee to leave one Japanese branch firm to work for an affiliate or subsidiary of that firm, or even for another legitimate Japanese enterprise also engaged in promoting commerce between Japan and the United States, without losing his treaty trader status, provided the prior approval of the Department of Justice were obtained.

ARTICLE XXII

Mr. Otake asked for a clarification as to the difference between corporation and company, and for a definition of partnerships and other associations as used in paragraph 3, Article XXII.

Mr. Bassin replied that a company is a society or association of persons interested in a common object and uniting themselves for the prosecution of some commercial or industrial undertaking or other legitimate business. The word, he added, is a generic and comprehensive term which may include individuals, partnerships and corporations. Furthermore, the term is not necessarily limited to a trading or commercial body, but may include organizations to promote fraternity among its members and to provide mutual aid and protection. He added that the word is sometimes applicable to a single entrepreneur.

Mr. Bassin stated that a corporation, on the other hand, is an artificial person or legal entity, created under the authority of the law of a state or subdivision thereof. It consists of an association of numerous individuals as a group under a special denomination which is regarded in law as having a personality and existence distinct from that of its several members. A corporation is vested with the capacity of continuous succession, either in perpetuity or for a limited term of years, and acts as a unit or single individual in matters related to the common purpose of the association within the scope of the powers and authority conferred upon it by law. The words "company" and "corporation" are commonly used as interchangeable terms. Strictly speaking, however, Mr. Bassin said, a company is an association of persons for business or other purposes and may be incorporated or not.

Mr. Bassin further stated that a partnership is a voluntary contract or association between two or more persons to place the money, effects, labor and/or skill of some or all of them in lawful commerce or business, with the understanding that there shall be a proportionate sharing of the profits and losses among them. An association, Mr. Bassin stated, is the union of a number of persons for some special purpose or business. It is generally an unincorporated society, and may consist of a body of persons united and acting together without a charter but pursuant to the methods and forms used by incorporated bodies for the prosecution of a common enterprise. The word "association" is a generic term and may at different times

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comprehend a voluntary association, such as a partnership, which is dissoluble by the persons who formed it, or a corporation dissoluble only by law.

Mr. Otake stated that these definitions were satisfactory and would be helpful in properly translating this Article into Japanese. He then asked if the various religious groups and foundations in the United States were considered juridical persons, and whether they were included in paragraph 3.

Mr. Bassin replied that organized religious groups and foundations may be juridical persons, but are usually unincorporated associations.

Mr. Otake inquired whether a Zaidan Hojin was covered by paragraph 3, and, if so, what would be the nature of national treatment accorded such organizations in the United States. He explained that a Zaidan Hojin is a duly organized juridical person with given property, established for the purpose of employing or disposing of said property for a given public purpose. An example of a Zaidan Hojin, he added, would be an endowed private library.

Mr. Bassin replied such an organization would be considered a juridical person in the United States, pursuant to the provisions of paragraph 3, if it were so considered in Japan.

Mr. Nagai then asked what "juridical status" meant, and inquired whether the recognition of juridical status mentioned in paragraph 3 meant anything more than the recognition of the existence of a juridical person.

Mr. Bassin replied that "juridical status" meant "legal status", the legal position of an organization in, or with respect to, the rest of the community. The recognition mentioned in the second sentence of paragraph 3, he added, meant merely the recognition by either Party of the existence and legal status of juridical persons organized under the laws of the other Party.

It was then agreed that the next meeting would be held on Friday, April 11, 1952, with discussions to begin on Article XXIII.

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Office of the United States
Political Adviser for Japan,
Tokyo.

MEMORANDUM OF CONVERSATION

Subject: Informal Discussions on the United States Standard Draft
Treaty of Friendship, Commerce and Navigation

Participants: For the Ministry of Foreign Affairs:

Mr. Morio YUKAWA, Director, Economic Affairs Bureau
Mr. Kenichi OTBE, Vice Director, Economic Affairs Bureau
Mr. Haruki MORI, Chief, First Section, Economic Affairs Bureau
Mr. Masao OHTO, Chief, Fourth Section, Treaties Bureau
Mr. Takeshi KANEMITSU, Secretary, First Section, Economic Affairs
Bureau
Mr. Kay MIYAGAWA, Secretary, First Section, Economic Affairs Bureau
Mr. Mikizo NAGAI, Chief, Sixth Section, Economic Affairs Bureau

For the Office of the United States Political Adviser, Japan:

Mr. Jules BASSIN, Legal Attache
Mr. Dudley G. JELGER, Commercial Attache
Mr. Robert W. ADAMS, Second Secretary

Place: Office of the Ministry of Foreign Affairs, Tokyo, Japan.

Date: Friday, April 11, 1952.

FIFTEENTH INFORMAL MEETING

ARTICLE XVIII

Mr. Yukawa stated that Japan wished to reserve its position with respect to the application of the FCN Treaty to certain territorial areas mentioned in Article III of the Treaty of Peace with Japan (i.e., the Ryukyu Shoto, or Southwest Islands, south of 29 degrees north latitude, including the Ryukyu Islands and the Daito Islands; the Nanno Shoto south of 29 degrees north latitude, including the Bonin Islands, Rosario Island, and the Volcano Islands; and the Perece Vela and Marcus Islands).

Mr. Otake added that the exact status of these islands was undetermined, and that some specific clarification in this respect was necessary in order properly to interpret the present FCN Treaty.

Mr. Bassin replied that Article XVIII was not ambiguous concerning the status of these islands, since they were clearly included in other provisions of the FCN Treaty. He invited the attention of the Japanese representatives to paragraph 6 of the Protocol in connection with these islands. Their future status, he added, is, of course, one which is not a concern of the FCN Treaty. Mr. Bassin said that he did not believe any useful purpose would be served by attempts to revise the terms of the standard draft to provide for possible contingencies created by the ultimate status of the Ryukyu Islands. Any such contingency, should it materialize,

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could be dealt with at the time the final settlement of their status occurs.

Mr. Adams added that this Article makes no attempt to define the extent of lands and waters under the sovereignty of either Party, and that it was to be assumed that if, or when, Japan again exercised sovereignty over the Ryukyu Islands or other islands these would then come within the scope of Article XXIII.

Mr. Otake stated that Japan was already extending preferential customs treatment to products of the Ryukyu Islands traditionally imported into Japan. It was anticipated that Japan would extend other specific rights or privileges to the people and the products of the Ryukyus (over which Japan retains residual sovereignty) which would not be accorded to any foreign country. Since such privileges were considered appropriate in view of the relationship of these islands to Japan, it was believed that a specific reservation was needed to ensure that the principle of most-favored-nation treatment would not be invoked by other countries in this connection.

Mr. Singer replied that a reservation in this respect was neither necessary nor appropriate, since it could not be formulated without raising political problems entirely foreign to the FCN Treaty. He suggested that the Japanese representatives consider the drafting of a statement on Japan's intentions concerning the extension of customs or other privileges to the people and products of the Ryukyu Islands. Such a statement, together with an appropriate reply by the American side, could be made of record in the memoranda of conversations on the present informal discussions.

Mr. Nagai stated that in addition to special customs treatment for products of the Ryukyu Islands, Japan would probably wish to consider these Islands as coming within the scope of its coastal trading, and might also wish to exempt Ryukyu Islanders from the normal immigration requirements for entry into Japan.

Mr. Yukawa asked for information as to the areas of land and water (other than the continental United States and the areas specifically mentioned in Article XXIII) under the sovereignty or authority of the United States to which the present FCN Treaty would be applicable.

Mr. Adams replied that the non-contiguous territories of the United States include Alaska, the Hawaiian Islands (including Midway) and the following dependencies: Puerto Rico, Guam, the Virgin Islands, Samoa (including Navassa, Tutuila, Swain's and other islands), Wake Island, and various other Pacific Ocean islands (Palmyra, Kure, Kingman Reef, Cornwallis or Johnston, Howland, Baker and Jarvis). With respect to the question on territorial waters Mr. Adams stated that the United States exercises jurisdiction over marginal waters to a distance of three miles (low-water mark) from its shores.

Mr. Yukawa then stated that it was earnestly requested that the words "and the Trust Territory of the Pacific Islands" be deleted from Article XXIII in order that the present Treaty might apply in general to the Trust Territory in view of:

a. The fact that equal treatment is ensured to members of the United Nations with respect to such strategic areas in accordance with Articles 76 and 83 of the

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United Nations Charter, to which Japan desires to become a signatory at the earliest possible date;

b. The close relationship that existed between Japan and the said Trust Territory; and

c. The belief that Japanese vessels in distress should be permitted to take refuge in the ports of the Trust Territory.

Mr. Yukawa added that in addition to this revision of Article XXIII, it was suggested that a provision be included in the Protocol to the following effect:

"It is understood that the present Treaty shall be extended as far as reasonably practical to the Trust Territory of the Pacific Islands."

Mr. Adams replied that the trusteeship agreement covering the former Japanese mandated islands (i.e., the Marshalls, the Marianas, the Carolines and others), is a commitment of the United States to the United Nations, whose Security Council is charged with the responsibility for agreements concerning the "strategic areas". It is inappropriate that a bilateral treaty bind the United States with respect to territories so held in trust in the name of the United Nations, since such a step would in effect commit the United Nations. He added that he believed the Department of State would, in the light of Japan's intention to become one of the United Nations at the earliest practicable moment, give sympathetic consideration to the extension of treatment to Japan, with respect to the Trust Territory, similar to that accorded other countries, insofar as this was feasible and appropriate. No commitment, of course, could be made concerning the "equal treatment" reserved for the United Nations under their Charter. Mr. Adams further stated that international custom alone sufficed to extend the right of refuge in the Trust Territory to Japanese vessels in distress, and that no modification of the standard draft was necessary to establish this elemental and humane principle.

ARTICLES XXIV, XXV, and XXVI

Mr. Otake stated that there were no questions at present on the Japanese side with reference to these three Articles. These were under study by the Treaties Bureau (particularly Article XXV in connection with outstanding treaties, on which point that Bureau might desire to express its views). Mr. Otake added that any comments of the Treaties Bureau would be discussed at later meetings.

ARTICLE XIV

Before opening discussions on the Protocol to the FCN Treaty, Mr. Yukawa stated that there were a few points he wished to raise concerning Articles previously discussed.

With reference to paragraph 1, Article XIV, Mr. Yukawa pointed to the statement reading "Each Party shall accord most-favored-nation treatment to products of the other Party from whatever place.... arriving...." He then asked if this

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clause would normally cover goods shipped to a third country and then re-exported to the territories of the other Party, whenever these goods had not been processed, modified, improved, or altered in the third country, and whenever the goods were covered by a certificate of origin clearly indicating them to be the product of either Party.

Mr. Nagai added that the customs regulations of some countries specify that certain rights accorded to another country with respect to customs duties were extended only when the goods were shipped directly from the country of origin. It appeared, however, that this requirement of direct shipment was not a part of the treatment provided for in Article XIV, and that goods might be shipped through a third country.

Mr. Singer replied that Mr. Yukawa's and Mr. Nagai's understanding was correct in that direct shipment from Japan to the United States, for example, was not a requisite for receiving customs and other treatment accorded to Japanese goods. It was understood that shipment through a third country would be limited to transit, transshipment, necessary storage and warehousing, et cetera, in that third country, and would not involve further labor or processing to improve or modify the original product. He added that marks of origin, invoices, certificates of origin, and other documentation could be utilized to demonstrate that goods were truly the product of a given country.

ARTICLE XVI

Mr. Yukawa referred to previous discussions on the screen quota system permitted under the GATT, and stated that the Japanese side wished to make a precise and specific reservation to the effect that Japan could implement such a procedure without violating the FCN Treaty provisions.

Mr. Nagai added that the GATT screen quota system (GATT, Article IV, "Special Provisions Relating to Cinematograph Films") was clearly an exception to the national treatment principle. Since Japan desires to implement such a procedure in the near future, and in view of the interest of the United States in this field, it was believed that unnecessary complications would be avoided if this reservation were entered in the most specific terms possible. While, contrary to the provisions of Article XVI, the case is a special one, added Mr. Nagai, and it was hoped that the United States would not object to the inclusion of the GATT formula.

Mr. Yukawa proposed therefore that the following paragraph be inserted in the Protocol (between paragraphs 3 and 4):

"The provisions of Article XVI shall not preclude either Party from applying a screen quota system to exposed cinematograph film similar to that provided for under Article IV of the General Agreement on Tariffs and Trade."

Mr. Adams replied that the Japanese proposal would be transmitted to the Department of State for its comments.

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ARTICLE XXI

Mr. Yukuwa then referred to previous discussions on paragraph 3, Article XXI, with respect to the situation arising from Japan's present exclusion from the GATT in spite of its strong desire to become a contracting party to the Agreement as soon as practicable. As a result of previous suggestions that consideration be given to leaving paragraph 3 substantially unchanged, and that a clarifying or qualifying clause be drafted, Mr. Yukuwa proposed that an additional phrase be inserted at the end of the second sentence, which would then read:

"Similarly, the most-favored-nation provisions of the present Treaty shall not apply to special advantages accorded by virtue of the aforesaid Agreement as long as either Party, of its own choice, does not adhere thereto."

Mr. Adams stated that Mr. Yukuwa's proposal would be referred to the Department of State for its consideration.

PROTOCOL

Mr. Yukuwa asked for a clarification of the term "mining on the public domain" as used in paragraph 3 of the Protocol. Mr. Bassin replied that this referred to mining activities on publicly held or Government-owned lands.

Mr. Mori pointed out that either Party reserves its rights concerning the exploitation of natural resources (paragraph 2, Article VII). At the same time, he added, the most-favored-nation treatment principle is established in this connection (paragraph 4, Article VII). He asked for confirmation of his understanding that if the right to mine on non-public lands were granted by Japan to nationals of a third country, this right would also have to be granted to Americans, whether or not Japanese were granted such rights in the United States. With respect to public lands, however, Mr. Mori stated that he understood the extension of this right was dependent on a reciprocal grant to Japanese by the United States.

Mr. Bassin replied that Mr. Mori's understanding was correct.

Mr. Nagai then stated that there was no distinction under Japanese law between private lands and public lands with respect to mining. He stated that all sub-soil resources were regarded as being of public domain and that no mining operations, even on private lands, could be undertaken without the specific approval of the Government.

Mr. Bassin asked whether all mining in Japan could be defined as "on the public domain", since in practice no mining activities could be conducted on privately-owned lands without permission from the Government, which holds title to all sub-soil mineral resources.

Mr. Kanematsu replied that this interpretation was correct in that even a Japanese national could not exploit mineral resources on lands of his ownership without the prior consent of the Government.

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Mr. Adams stated that it appeared that the Japanese interpretation of paragraph 3 of the Protocol was that "mining on the public domain" included all mining in Japan, and hence that rights of aliens to engage in mining was dependent on reciprocity. In view of the phraseology employed in this paragraph and in Article VII, it was believed that the Department of State regarded mining on private lands as falling within the scope of the latter Article, while paragraph 3 of the Protocol (and its clause on reciprocity) was limited in scope to mining on public lands. Mr. Adams said that further study would be given this point by the American side, and that the views of the Department of State would be requested.

Mr. Yukawa then stated that the single word "access", as used in paragraph 1 of the Protocol, cannot be properly translated into Japanese. He added that in paragraph 1, Article V, the term "access to the courts" is translatable as a single expression in common use in Japan. In order properly to translate the ICN Treaty, and with a view to assuring that both the English and Japanese texts correspond in terminology as closely as possible, Mr. Yukawa proposed that the word "access" in paragraph 1 of the Protocol be deleted and the phrase "access to the courts, administrative tribunals and agencies" be used in its place.

Mr. Bassin replied that there was no objection to this change, and that the working draft of the treaty would be so amended for the present discussions, subject to approval by the Department of State.

Mr. Yukawa asked for a clarification of the terms "legal aid" and "security for costs and judgment", as used in paragraph 1 of the Protocol.

Mr. Bassin replied that legal aid was such aid as is granted either privately or as a governmental function to those persons who are normally unable to acquire legal assistance from private channels. Mr. Bassin stated that in the United States there are many legal aid societies whose functions it is to provide legal advice, guidance and assistance to persons who are unable to pay fees to private attorneys. With respect to security for costs and judgment, Mr. Bassin indicated that it was a security which a defendant in a law suit may require of a plaintiff who does not reside within the jurisdiction of the court, for the payment of such costs or judgment as may be awarded to the defendant.

It was then agreed that the next meeting would be held on Tuesday, April 15, 1952, with discussions to continue on the Protocol to the ICN Treaty.

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Office of the United States Political
Adviser for Japan,
Tokyo.

MEMORANDUM OF CONVERSATION

Subject: Informal Discussions on the United States Standard Draft
Treaty of Friendship, Commerce and Navigation

Participants: For the Ministry of Foreign Affairs

Mr. Morio YUKAWA, Director, Economic Affairs Bureau
Mr. Kenichi OTABE, Vice Director, Economic Affairs Bureau
Mr. Haruki MORI, Chief, First Section, Economic Affairs Bureau
Mr. Takeshi KANEMATSU, Secretary, First Section, Economic
Affairs Bureau
Mr. Kay MIYAGAWA, Secretary, First Section, Economic Affairs
Bureau
Mr. Mikizo NAGAI, Chief, Sixth Section, Economic Affairs Bureau

For the Office of the United States Political Adviser, Japan:

Mr. Jules BASSEN, Legal Attache
Mr. Dudley G. SINGER, Commercial Attache
Mr. Robert W. ADAMS, Second Secretary

Place: Office of the Ministry of Foreign Affairs, Tokyo, Japan.

Date: Tuesday, April 15, 1952.

SIXTEENTH INFORMAL MEETING

PROTOCOL

Mr. Otabe stated that a number of points had been raised by the Treaties Bureau in connection with paragraph 6 of the Protocol. It was anticipated that questions would arise in the Diet on this paragraph, and that the concept of military bases and areas under temporary military occupation had political implications. It was suggested therefore that this paragraph be deleted and that its substance be incorporated in a side letter of understanding.

Mr. Adams replied that this paragraph was standard and that he could see no reason why the phrases in question should be the subject of Diet debate. Mr. Bassen added that there were no "military bases" in Japan and that only the phrase "temporary military occupation" had a bearing in this case. He pointed out that, notwithstanding any theoretical discussion concerning the status of the Ryukyu Islands, the fact remained that these islands were under such temporary military occupation (a point previously discussed at the meeting on April 11, as was also the question of the future status of these islands).

Mr. Kanematsu stated that with the coming into effect of the Treaty of Peace with Japan there was no further basis for the continued military occupation of the Ryukyu Islands. If this occupation were to cease, and if some form of United

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Nations trusteeship were not simultaneously effective, the status of the Ryukyu Islands would be vague and would not come within the scope of paragraph 6.

Mr. Bassin replied that if Mr. Kamekatsu were correct he would assume that the status of the Military occupation of the Ryukyu Islands would be clarified by the United States for various cogent reasons entirely apart from the considerations involved in the FCN Treaty. The fact was that the United States regarded these islands as falling within the definition of paragraph 6 (i.e., a territory under the authority of the United States by reason of temporary military occupation). He added that if a trusteeship agreement were reached on the islands, it was to be assumed that the United States would administer them. Mr. Bassin further pointed to Japan's acceptance of such a trusteeship administration by the United States in Article III of the Treaty of Peace. In the event of this occurrence, it was to be assumed that the United States would at that time make a reservation to the FCN Treaty with respect to the Ryukyu Islands, just as it had in Article XXIII for the Trust Territory of the Pacific Islands.

In response to a question by Mr. Otake, Mr. Adams again stated that the phrase "military bases" did not apply to areas in Japan, and added that this reservation was necessary in the eyes of the United States because of its military bases in other parts of the world. He stated that the United States has concluded arrangements, usually under lease, with various countries for military, naval, or air bases. Some of these have been held as bases for a number of years, particularly in the Caribbean area.

Mr. Yukawa stated that it was possible that the Treaties Bureau might wish to make of record some clarification on the status of the Ryukyu Islands, based on its interpretation of the Treaty of Peace discussions at San Francisco. This - in addition to the statement on Japan's desire and intention to accord special customs and other treatment to these islands, as discussed at the meeting of April 11 - might be inserted in the memoranda of conversation on the present meetings together with an appropriate comment by the American side.

Mr. Adams replied that there appeared to be no objection to the recording of such statements, and that he believed this question should be handled in this manner and not included in any additional provision or reservation in the present FCN Treaty.

Mr. Yukawa then stated that it was not intended that these memoranda receive wide circulation nor be released to the press, but that the question of the applicability of the Treaty to the Ryukyu Islands would be of great general interest. He suggested that a statement clarifying this point and furnishing more precise details than are found in the standard draft be prepared for public release at an appropriate time.

Mr. Singer replied that it was not believed that the Department of State would perceive any objection to such clarification for the public by the Ministry of Foreign Affairs and stated that further study would be given this point when the comments of the Treaty Bureau were available for discussion.

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Mr. Yokawa stated that he would consider this matter further and consult with the Trustees Bureau.

Mr. Otake then asked for an interpretation of the phrase "interests held directly or indirectly" as used in paragraph 2 of the Protocol.

Mr. Bassin replied that this phrase was intended to remove any doubt concerning the payment of compensation for the taking of "any" legitimate interests in property. Mr. Bassin said that "a direct interest" in property was an interest in which the title or right to the property was immediate and without the intervention of a connecting channel. On the other hand, an "indirect interest" in a property was an interest which was claimed through a medium or by a circuitous route. The phrase in question is intended to extend to every type of right or interest in property which is capable of being enjoyed as such, and upon which it is practicable to place a monetary value. These direct and indirect interests in property include not only rights of ownership, but rights of possession, use and enjoyment; it includes a lease hold interest, easements, contracts, franchises, and other tangible and intangible property rights. In response to a question by Mr. Otake as to an illustration of an indirect interest in property, Mr. Bassin said that the interest of a principal in property held for him by an agent in the agent's name was an indirect interest. In conclusion, Mr. Bassin stated that the phrase "direct or indirect" as used in the Protocol was generally a term of art calculated to clarify that all property interests were contemplated by the provision.

Mr. Otake asked whether national treatment would apply if the scope of direct or indirect property interests under Japanese law was different from United States law. In other words, if certain indirect interests were not subject to compensation under Japanese law, but would be under United States law, would Japanese national treatment prevail.

Mr. Bassin replied to the effect that United States law is not applicable in Japan and that, generally, national treatment would apply. However, if such national treatment was at variance with the international standard or concept of compensation in appropriation cases, such international standard would be applicable. As an example, Mr. Bassin stated that if property were taken for a public purpose and compensation provided in the form of bonds maturing in 10 years, a question would arise as to whether such compensation met the requirements of international law which provides for just, adequate and prompt compensation.

In response to a question by Mr. Otake as to whether loss of expected profits was compensable under American law, Mr. Bassin said that, as a general rule, loss of expected profits was not an element of compensation in eminent domain proceedings. Mr. Otake inquired as to whether each state in the United States is required to pay just compensation where property is taken for a public use. Mr. Bassin replied that each state in America, as well as the Federal Government, is required by law to compensate for the taking of private property for public use and that the law on this subject as defined by the State and Federal courts is generally uniform.

Mr. Yokawa then referred to paragraph 4 of the Protocol and asked why postal services were excepted from the provisions of Article XVII, paragraph 2 (c), and of Article XIX, paragraph 4.

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Mr. Bassin replied that Article VIII, paragraph 2 (a), did not apply to postal services because it was customary to extend certain privileges to nationals (particularly officials) not granted to aliens. He added that franking privileges (free postal service) were granted to members of the United States Congress and other officials, as well as to military personnel serving overseas, and that this reservation was needed to cover these cases. Mr. Bassin added that he had no knowledge of any other postal service not available to aliens on a national treatment basis, but that the question would be referred to the Department of State for verification.

Mr. Otake stated that similar free postal privileges were extended in Japan to certain individuals, including candidates to public office during an electoral campaign.

With respect to the exception of the postal service from the provisions of paragraph 4, Article III, Mr. Singer stated that it was customary among nations to award mail contracts to vessels and aircraft of their own registry. Such arrangements were normally limited to national vessels and aircraft, particularly with respect to the granting of bounties for the carriage of mail. He added that some South American countries permitted their nationally registered air lines to sell air mail postal service to the public, actually selling the postage stamps involved, from which the Government received a share of the proceeds. In these cases, added Mr. Singer, the air lines would themselves make arrangements with foreign air lines for the carriage of mail over international routes.

Mr. Adams stated that a mail contract and bounty system (i.e., payment by the Government, usually on a mileage basis, of a sum of money sometimes greater than the actual cost by weight of the mail involved) was a means of encouraging the development of international routes by nationally registered shipping and air lines, and was regarded as of special importance during the initial stages of unprofitable commercial operation. Such systems and the favoring of national vessels and aircraft (normally to the exclusion of all foreign vessels and aircraft) in the carriage of mail were accepted international practices.

It was agreed that the next meeting would be held on Thursday, April 17, 1952, with discussions to continue on the Protocol to the PCN Treaty.

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Office of the United States Political
Adviser for Japan,
Tokyo.

MEMORANDUM OF CONVERSATION

Subject: Informal Discussions on the United States Standard Draft
Treaty of Friendship, Commerce and Navigation

Participants: For the Ministry of Foreign Affairs:

Mr. Morio YUKAWA, Director of Economic Affairs Bureau
Mr. Kenichi OTABE, Vice Director, Economic Affairs Bureau
Mr. Haruki KORI, Chief, First Section, Economic Affairs
Bureau
Mr. Takeshi KANEWATSU, Secretary, First Section, Economic
Affairs Bureau
Mr. Kay MIYAGAWA, Secretary, First Section, Economic
Affairs Bureau
Mr. Mikizo NAGAI, Chief, Sixth Section, Economic Affairs
Bureau

For the Office of the United States Political Adviser, Japan:

Mr. Jules BISHOP, Legal Attache
Mr. Dudley G. SINGER, Commercial Attache
Mr. Robert W. ADAMS, Second Secretary

Place: Office of the Ministry of Foreign Affairs, Tokyo, Japan.

Date: Thursday, April 17, 1952.

SEVENTEENTH INFORMAL MEETING

PROTOCOL

Mr. Yukawa asked for a clarification of the status of Puerto Rico, and requested information as to why it was necessary to stipulate (paragraph 5 of the Protocol) that the provisions of Article XXI, paragraph 2, would apply to Puerto Rico regardless of any change in its political status.

Mr. Adams replied that Puerto Rico was a dependency of the United States, administered under the Organic Act of Puerto Rico (1917), as amended, which extends American citizenship to Puerto Ricans. Although not an organized territory such as Alaska and Hawaii, Puerto Rico is administered by a Governor of its own election. It has a legislative branch (both a Senate and a House of Representatives) elected by direct

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vote, and sends a Resident Commissioner to Washington (where he has a voice but no vote in the United States House of Representatives). The reason for its specific mention in the Protocol, Mr. Adams added, was that the establishment of an independent Republic of Puerto Rico at some future date was possible. If this change took place, Puerto Rico would occupy a position similar to that of the Republic of the Philippines, with respect to which a specific reservation is made in paragraph 2, Article XII. It was to be assumed that the standard draft provision would be modified to make mention of such a Republic of Puerto Rico (this dependency already being included in paragraph 2, Article XII, as a possession of the United States) if, or when, its political status was so changed.

Mr. Yukawa then referred to paragraph 3-bis of the Protocol, newly proposed by the Department of State. He said that the original Japanese proposal had been drafted by the Ministry of Foreign Affairs along somewhat idealistic lines. Other Japanese Government Ministries took a more specific and technical view of this provision, and had raised a number of questions concerning paragraph 3-bis as proposed by the Department of State. In the first sentence of this paragraph, he added, the standard draft stated that either Party could prohibit the importation, seize, restrict or regulate the sale "of any goods which are not marked in such a manner as to indicate the name of the country of origin of such goods". It was believed that this clause was far too wide in scope, since there were many commodities which could not be so marked (except in their original shipping container).

Mr. Nagai added that this entire paragraph appeared to be designed with the prevention of unfair trade practices in mind. The non-marking of goods, as such, could not be considered an unfair or deceptive practice. Furthermore, he added, Japanese law does not require the marking of all goods, nor did he believe that the United States would prohibit the import of unmarked goods unless they were deliberately left unmarked in order to deceive the buyer or the public. He stated that he believed therefore that the present clause was stated in too positive a way, going beyond what might be considered a defense against unfair trade practices.

Mr. Yukawa suggested that consideration be given the deletion of the phrase under discussion, thus making the first sentence read, in part, "or otherwise restrict or regulate the sale of any goods which are so labeled, marked, or otherwise identified as to create misrepresentation. . .".

Mr. Singer replied that the Japanese proposal would limit this paragraph to a single reservation (i.e., with respect to the positive or deliberate act of falsely marking goods), whereas the Department of State proposal included two points. In addition to that accepted by the Japanese side, the standard draft made a reservation with respect to the requirement that goods be so marked as clearly to indicate their origin. He added that the terminology employed in this paragraph (and the use of the word "may") clearly indicated

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that the marking of goods would not be a requirement in all cases. If the present phrase was considered too sweeping in character - as the Japanese side believed - it was suggested that the Japanese representatives consider leaving the phrase untouched and adding to it some qualifying clause.

Mr. Yukawa stated that Japan had no laws or regulations requiring the marking of imported items, and that it was believed this clause should be limited to cover only the unfair or deceptive trade principle, which was adequately regulated in the United States and Japan. He asked for an example of the action which might be taken by a United States customs official with reference to unmarked imported goods.

Mr. Adams replied that it was difficult to give a general illustration, since it was agreed that there were many commodities (ranging from raw materials to such finished goods as fine crystal tableware) which could be identified only by label, or on the shipping container, or by documentation of origin. As a possible example, he cited souvenir items involving American motifs (such as replicas of the Washington Monument, plaster figurines of American historical figures, et cetera) as among those which would unquestionably be forbidden entry by a United States Customs official unless these were clearly marked to indicate their foreign manufacture.

Mr. Yukawa stated that such cases were readily understood, but that it was believed that these fell clearly within the category of cases involving deceptive trade practices, since the public would believe these items to be of American manufacture. With the basic objective of preventing deceptive trade practices in mind, Mr. Yukawa proposed that the phrase in question be deleted, and that the phrase "of any goods which are left unmarked in an attempt to conceal the name of the country of origin of these goods" be used in its place. The first sentence of paragraph 3-bis would therefore read:

"With reference to Article XIV, paragraph 4, it is understood that either Party, acting in accordance with its laws, may prohibit the importation into its territory, or seize, or otherwise restrict or regulate the sale of any goods which are left unmarked in an attempt to conceal the name of the country of origin of these goods, or which are so labeled, marked, or otherwise identified as to create misrepresentation or false impression as to their true geographic or commercial origin."

Mr. Adams replied that the Japanese proposal would be made of record provisionally for the purpose of these informal discussions, and that this point would be referred to the Department of State for its consideration.

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Mr. Nagai then referred to the phrase "to prevent misrepresentations, direct or by implication" in the second sentence of paragraph 3-bis, and stated that it was believed by some agencies that it would be best to use the phrase "to prevent such misrepresentations that would cause misunderstanding. . .". He asked whether such a substitution would be acceptable.

Mr. Bassin replied that the second phrase was somewhat obscure, since misunderstanding on the part of the public was a factor over which little control could be exercised. He added that misunderstanding was possible even when there was no intention of misrepresenting a product, and that he believed the standard draft phrase was the more precise of the two.

Mr. Otake replied that this explanation was acceptable to the Japanese side, but questioned that part of the phrase which reads "direct or by implication". He added that the Madrid Agreement (for the Prevention of False Indications of Origin on Goods) of 1934 - to which Japan hoped to adhere in the near future - used the phrase "direct or indirect" in this connection. He stated that the latter was preferred by the Japanese side, and proposed that this phrase in paragraph 3-bis be so amended.

Mr. Bassin replied that he believed both terms to have the same meaning, but that the change proposed by the Japanese side would be made in the working draft of these informal discussions, and that this proposal would be referred to the Department of State for its consideration.

Mr. Otake referred again to the Madrid Agreement and stated that there were certain clauses in that Agreement which might possibly be added to paragraph 3-bis. He suggested therefore that consideration be given the addition of the following clause, to be part of the first sentence, immediately following the words "geographic or commercial origin":

"to the detriment of the distinctive regional or geographic names of goods of the territory of such Party as are protected by its legislation and communicated to the other Party, or are not regional appellations of generic character of such goods, or to the detriment of the nationals or companies of such Party which produce or make the similar kinds of goods."

Mr. Adams replied that the suggestion of Mr. Otake would make paragraph 3-bis far wider in scope than was intended in the standard draft's phraseology, and raised certain questions concerning the use of the so-called "generic appellations" with respect to which the United States policy was firm and specific. He added that it was believed that numerous words, originally denoting regional origin, are considered to have come into common use in world markets. As examples such long-used words as "tweed", "shantung"

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silk, "worsted" wool, "oxford" fabrics, and others could be cited. By the same token, it was permissible in the United States to produce "port", "sherry", "champagne" and other wines and liquors, despite the traditional objection voiced by countries in whose districts such wines were originally produced. Mr. Singer added that, in order to prevent misrepresentation to the public, such wines and liquors of these names produced in the United States were clearly labeled to show their American origin. In view of these circumstances, and the fact that the Japanese suggestion appeared to go far beyond the intent of paragraph 3-bis, Mr. Adams asked that the Japanese side reconsider its position on this point.

Mr. Otake replied that this explanation was satisfactory, and that it was now understood that the Japanese proposal would have made this paragraph wider in scope rather than make it of more specific and limited application, which had been one of the considerations on the Japanese side. He then asked for a clarification of the term "true geographic or commercial origin" as used in the first sentence, paragraph 3-bis.

Mr. Bassin replied that this was meant to cover goods not only the native product of a country, but also those which were imported from other sources and then modified, transformed, improved or purified to such an extent that they were no longer considered the product of the original country but rather of the country where this handling or processing took place. The latter, as well as manufacture or processing to varying degrees, came within the definition of "commercial origin".

Mr. Yukawa then stated that the words "or are the products of a national or company of such other Party", with which the second sentence of paragraph 3-bis now concluded, were not clearly understood. He pointed out that it appeared that the earlier phrase in this sentence (which covered territories and distinctive places) adequately protected the trade interests of either Party, and that the phrase in question appeared to refer to specific firms and individuals whose rights to industrial property, and trade marks and names, were already assured under Article I. Mr. Nagai added that this phrase appeared to give foreign trade names greater protection than was extended under Article I. He stated that an American trade name or mark, for example, could be given legal protection in Japan only if it were properly registered under Japanese law, as provided for in Article I, and that the latter part of paragraph 3-bis might be construed as extending such protection even if the mark were not registered in Japan.

Mr. Adams replied that it was not believed that this clause was intended to assure any rights to protection of trade marks or names not already covered in Article I. He cited as a possible example of action coming within this clause, the case of an American manufacturer who (without claiming that his product originated in Japan) might distribute his product under a name implying its manufacture by Japanese interests in the United States or in a third country. If this product were similar to items exported from Japan, and if

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the quality of the former were such as to affect adversely the marketability, prestige or reputation of the Japanese export product, it was believed that the Japanese Government (or an industry-wide association) would be justified in requesting action to prohibit such misrepresentation.

Mr. Nagai replied that if this clause was meant to cover such cases as those outlined by Mr. Adams, there appeared to be no objection in principle, but he added that the broad terms presently employed in paragraph 3-bis further implied the assurance of protection to foreign industrial property owners whose rights were not duly registered in Japan. Mr. Mori added that in those cases where an individual or firm in the United States had reason to believe that his name or mark was being used fraudulently in Japan, he would have access to Japanese courts for relief. He added, however, that it was inappropriate for the Government to undertake the general obligation of policing this field by taking measures to protect all foreign firms and individuals with respect to their unregistered marks and names, since this was clearly a case for individual suit.

Mr. Yukawa stated that the Japanese side would be willing to consider the retention of the phrase "or are the product of a national or company of such other Party" - provided this phrase clearly did not extend legal protection to marks, names and other rights not duly registered in Japan - but only with the addition of a clause stating "acting in accordance with its laws". He suggested that the combination of these two phrases, possibly incorporated in a new sentence which would not imply that Japan need take special measures or adopt new legislation, would be given further consideration by the Japanese side. He added that it was considered preferable, however, that this clause be withdrawn from the Department of State's proposal since he believed that the remainder of the sentence gave all the assurances which were necessary or appropriate. He proposed therefore that the phrase "or are the product of a national or company of such other Party" be deleted from the second sentence.

Mr. Adams replied that this proposal would be referred to the Department of State, and added that the Department would also be requested for clarification of the phrase in question in order to determine whether the additional Japanese suggestion (i.e., a third sentence containing the various thoughts expressed by Mr. Yukawa) could appropriately be formulated. In order to clarify the record Mr. Adams stated that the amended paragraph 3-bis of the Protocol, as proposed by the Japanese side, read as follows:

"With reference to Article XIV, paragraph 4, it is understood that either Party, acting in accordance with its laws, may prohibit the importation into its territory, or seize, or otherwise restrict or regulate the sale of any goods which are left unmarked in an attempt to conceal the name of the country of origin of these goods, or which are so labeled, marked, or otherwise identified as to create misrepresentation or false

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Impressions as to their true geographic or commercial origin. Furthermore, each Party agrees to take appropriate steps to prevent misrepresentations, direct or indirect, of goods produced or sold in or exported from its territory within the territory of the other Party or any of its places within such territory."

Mr. Takawa replied that this was a correct version of the Japanese proposal. It was agreed that the next meeting would take place on Tuesday, April 22, 1952.

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